

Notice of Allowability

Application No.

10/046,542

Examiner

Anne Marie S. Wehbe

Applicant(s)

JEFFERIES ET AL.

Art Unit

1633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 10/25/07.
2. ☒ The allowed claim(s) is/are 21, 25, 26, 28 and 31-33.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

EXAMINER'S AMENDMENT

A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/25/07 has been entered.

As indicated in the Petition decision mailed to applicants on 11/28/07, the petition to revive under 37 CFR 1.137(b) has been granted and applicant's RCE submission has been accepted. The RCE was filed with an amendment to the claims, and further requests the entry of non-entered after-final amendments dated 9/27/06 and 1/22/07. All three amendments have been entered. Claims 21, 25-28, and 31-35 are pending following entry of these amendments, claims 1-20, 22-24, and 29-30 having been canceled.

The rejection of previously pending claims 21-24, and 26-29 for obviousness-type double patenting over claims 1-10 of U.S. Patent No. 6,361,770 is withdrawn over canceled claims 22-24 and 29, and further withdrawn over previously pending and new claims 21, 26-28, and 31-33 in view of the terminal disclaimer filed on 1/22/07. The terminal disclaimer filed on 1/22/07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,361,770 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The rejection of previously pending claims 1, 3, 7-8, 14, and 17-30 under 35 U.S.C. 112, first paragraph, for scope of enablement is withdrawn over canceled claims 1, 3, 7-8, 14, 17-20, 22-24, and 29-30, and further withdrawn over amended claims 21, and 25-28 in view of the amendments to the claims and arguments. The rejection does not apply to new claims 31-33, as these claims include the limitation the vector is a viral vector, or to new claims 34-35, as these claims have been canceled by examiner's amendment, see below.

The rejection of previously pending claims 1, 3, 7-8, and 19 under 35 U.S.C. 102(b) as being anticipated by Spies et al. is withdrawn in view of the cancellation of these claims.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John Rissman on 12/17/07.

The application has been amended as follows:

1. Claims 34-35 have been canceled.

2. On page 1 of the specification, line 2, the phrase "(now allowed)" has been replaced by the phrase -- , now U.S. Patent No. 6,361,770 -- .

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. If the examiner is not available, the examiner's supervisor, Joseph Woitach, can be reached at (571) 272-0739. For all official communications, **the new technology center fax number is (571) 273-8300**. Please note that all official communications and responses sent by fax must be directed to the technology center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737. For any inquiry of a general nature, please call (571) 272-0547.

The applicant can also consult the USPTO's Patent Application Information Retrieval system (PAIR) on the internet for patent application status and history information, and for electronic images of applications. For questions or problems related to PAIR, please call the USPTO Patent Electronic Business Center (Patent EBC) toll free at 1-866-217-9197.

Representatives are available daily from 6am to midnight (EST). When calling please have your application serial number or patent number available. For all other customer support, please call the USPTO call center (UCC) at 1-800-786-9199.

Dr. A.M.S. Wehbé

/Anne Marie S. Wehbé/
Primary Examiner, A.U. 1633